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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1951.

No. .....

AIR LINE DISPATCHERS ASSOCIATION A. F. of L. and MARVIN C. MERRILL, PETITIONERS,

vs.

THE NATIONAL MEDIATION BOARD, JOHN THAD SCOTT, CHAIRMAN, FRANCIS O'NEILL, JR., and LEVERETT EDWARDS, MEMBERS, RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

Air Line Dispatchers Association, A. F. of L., and Marvin C. Merrill, as president of Air Line Dispatchers Association, A. F. of L., pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit dated May 17, 1951, (R. 19) which in turn affirmed the judgment of the

District Court of the United States for the District of Columbia dated April 20, 1950 (R. 10).

OPINIONS BELOW

The opinion of the District Court for the District of Columbia is at (R. 8). The opinion of the Court of Appeals for the District of Columbia is at (R. 13).

JURISDICTION

The Supreme Court of the United States has jurisdiction because of the provisions of 28 U. S. C. A. Sec. 1254, paragraph (1) (Judicial Code Sec. 240 as amended), and 28 U. S. C. A. Sec. 2101.

QUESTIONS PRESENTED

1. Are airline employees covered by Title II of the Railway Labor Act, as amended, limited to those performing work defined in the orders of the Interstate Commerce Commission (as held by the Court of Appeals below R. 17), or does the Civil Aeronautics Act and its regulations govern.

2. Are the rights of representation for collective bargaining, granted by the Railway Labor Act, as amended, to be denied employees of a common carrier by air which is a Delaware corporation with its principal office in the City of New York, simply because the routes of such employer granted it by the Civil Aeronautics Board extend beyond the continental United States, and such employees are from time to time and sometimes continuously stationed outside the United States and transferred to and from the United States in the performance of their duties as required by the Civil Aeronautics Act, and the Regulations adopted thereunder; resulting from a refusal of the National Mediation Board to investigate the representation dispute.

3. Does the investigation of a representation dispute by the National Mediation Board require any extra-territorial application of such Act, simply because the routes of the

airline employer, granted by the Civil Aeronautics Board under the Civil Aeronautics Act, extend beyond the continental United States and its territories, where such employees are required by reason of their duties, to be stationed from time to time, and sometimes continuously, outside the United States and its possessions; and are transferred to and from the United States to foreign countries along the lines of said air carrier, as directed by the Civil Aeronautics Administrator pursuant to the Civil Aeronautics Act, and where said employer is a Delaware corporation with its principal office in the City of New York.

4. Is the National Mediation Board under Section 152, ninth, of the Railway Labor Act as amended, required or permitted to refuse to process an application by a labor organization, to investigate and certify a representation question among employees of a Delaware corporation with its principal office in the City of New York, which is an American Flag common carrier by air, certificated and operating pursuant to the Civil Aeronautics Act; when such employees are subject to such employer's continuing authority to supervise and direct the manner of rendition of their services, wherever located.

STATUTES AND REGULATIONS

The Railway Labor Act as amended Title 45 U. S. C. Sec. 151 et seq. particularly Sec. 152, ninth, and Title 45 U. S. C. Sec. 161-186, Civil Aeronautics Act, Title 49 U. S. C. Sec. 401-402 and 481 Subsec. L (3) (4), and the Civil Air Regulations parts 27, 41.84, 41.85, 41.93, 41.0, and Orders of the Interstate Commerce Commission, Ex Parte No. 72, Feb. 5, 1924, are set out in the Appendix, infra, pp. 16-19.

STATEMENT

The Court of Appeals has construed the statutes to deny collective bargaining to an important professional, licensed, group of employees of American Flag air carriers. In

refusing to hold otherwise the Court of Appeals has decided an important question of Federal law which has not been, but should be settled by this Court. The labor relations of all of the pilots, dispatchers and other skilled groups operating United States Flag air carriers internationally have been frustrated. The Civil Aeronautics Board reports that American Flag carriers are certificated to operate 203,678 route miles internationally, and to serve 239 foreign points in all the continents of the world, and that for a two year period ending April 14, 1950, three million passengers were transported throughout the world without a fatality.

The only factual basis for the decisions of the Courts below and of this Court are the facts alleged in the petitioners amended complaint since such allegations are admitted for the purposes of this case, the District Court having sustained a motion to dismiss (R. 10), and the Court of Appeals having affirmed the District Court's decision. (R. 19).

In its opinion the Court of Appeals departed from the factual basis of this case contained in the amended complaint of the appellants. That Court as the factual basis for it's decision stated:

> "the company operates and the dispatchers are employed solely outside the continental limits of the United States." (R. 13).

The amended complaint truly describes the routes of the carrier as extending through the Panama Canal Zone and into the City of Miami, State of Florida. (R. 3).

Petitioners by their amended complaint (R. 1) complained that the respondents had failed to comply with the Railway Labor Act as amended when they dismissed an application of the petitioners for investigation of a representation dispute and certification as bargaining agent on behalf of the aircraft dispatchers in the employ of Pan

American-Grace Airways, Inc. That petitioner is a labor organization, that the National Mediation Board has the duty prescribed in the Railway Labor Act, to investigate representation disputes and certify the representative for collective bargaining. (R. 2). That the dispatchers are a recognized class or craft licensed under the Civil Aeronautics Act, and required by Civil Air Regulations to work and be stationed all along the routes of the carriers. That by reason of the world-wide routes of American Flag air carriers, some of these dispatchers are required to be stationed from time to time, and sometimes continuously outside the United States, and to be transferred to and from the United States. (R. 3). That the employer, Pan American-Grace Airways, Inc. is a Delaware corporation with its principal offices in New York, that the employer is a common carrier by air engaged in foreign commerce and transporting mail for and under contract with United States. That the routes of the employer certificated by the Civil Aeronautics Board run from Miami, Florida, to the Canal Zone and thence through South American countries. (R. 3). That both the employer and the employees fulfill completely the definitions of each in the Railway Labor Act as amended. That the petitioner is the only labor organization representing aircraft dispatchers in the world. That the petitioner properly filed its application with the National Mediation Board and furnished to such Board original, duly executed authorizations from all of the aircraft dispatchers in the employ of Pan American-Grace Airways, Inc. That the Board held a hearing directed to the sole question of its legal jurisdiction to deal with the matter and took no other action than to dismiss the application. That the action of the Board wholly failed to comply with its statutory duties and completely denied to the aircraft dispatchers their right of representation for collective bargaining (R. 5).

The Board moved to dismiss the complaint. (R. 7). The District Court granted this motion upon the ground of

lack of judicial power to review any action or inaction of the Board. (R. 8). The Court of Appeals held that the Courts did have such power, (R. 16), but upon review affirmed the lower court upon the ground that any employees stationed outside the United States were beyond the purview of the Railway Labor Act as amended. (R. 18).

The Court of Appeals besides basing its opinion upon a mistake in fact, misinterpreted Title II of the Railway Labor Act as only applying to railroad employees, as defined by the Interstate Commerce Commission (R. 17). The employees performing work defined by the Interstate Commerce Commission have remained substantially unchanged since 1924 I. C. C. Ex. Parte No. 72, February 5, 1924 when no airline existed.

The same Court, District of Columbia Court of Appeals in the case of *Brotherhood vs. I. C. C.*, 147 Fed. 2nd 312, (Cert. den. 325 U. S. 860) held that such power of the I. C. C. meant only to state whether an individual was an employee, or a subordinate official, or an official; and did not mean that the I. C. C. had power to order whether a given carrier was subject to the Railway Labor Act or whether a given group of employees were subject to the Railway Labor Act. Precisely the Interstate Commerce Commission holds the same way, *Ex. Parte No. 72 (Sub. No. 1)* August 1941 - 246 I. C. C. 703.

REASONS FOR GRANTING THE WRIT

The Court of Appeals for the District of Columbia has decided a question of general importance, and a question of substance relating to the construction and application of statutes of the United States, which have not been, but should be settled by this Court.

Taking up the questions in the order presented:

ONE: The Court of Appeals below based its decision upon a reason which would deny to all airline employees,

domestic or international, their rights of collective bargaining. The Court of Appeals held that Title II of the Railway Labor Act is no broader in definition of employee than is Title I (R. 18). Title I dealt only with railroads, and the classes or crafts of their employees are those performing work defined in the orders of the Interstate Commerce Commission. No orders of the Interstate Commerce Commission define any work of employees of airlines either domestic or foreign. (*I. C. C. Ex. Parte No. 72,* Feb. 5, 1924.) On the contrary the airline employee groups and the work performed by airline employees is defined in the Civil Aeronautics Act and the Civil Aeronautics Regulations promulgated in accordance with said Act by the Civil Aeronautics' Board. (Civil Air Regulations Part 41.93). These regulations define and require licensing of aircraft dispatchers. (Civil Air Regulations Part 27). These regulations require them to be stationed out along the world-wide routes of their employers, (Civil Air Regulations Parts 41.84 and 41.85), as well as in the United States. (Civil Air Regulations Parts 61.1 and 41.0), and the individuals are constantly transferred back and forth. It is inconceivable that federal law on one hand would require a dispatcher to be sent to perform his duties at Lima, Peru, for his employer, and on the other hand deny him the right to choose his collective bargaining representative simply because he was there.

TWO: This poses the question as to the propriety of the refusal of the National Mediation Board to perform its duties with respect to airline employees who happen at any given time to be working outside the United States. To do this the Board would separate classes or crafts geographically, *Switchmens' Union vs. National Mediation Board* 135 Fed. 2nd, 785, and hold that while an employee is abroad he loses his coverage protection of the law, and then regains it when transferred to the United States, and then again loses it when re-transferred to foreign countries. Followed to the

last degree, each flight crew on every foreign bound plane would have statutory protection only until the plane reached the three mile limit. Such separating of crafts and separation of individuals is incongruous but necessarily follows from the Board's and lower Court's decision.

THREE: The function of the Board commanded of it by the Act is actually performed by mail ballots and requires no extra territorial application of the Act, (Railway Labor Act, Sec. 152, ninth). The same mail elections are necessarily held along the far flung routes of purely domestic airlines, and the work of the Board through a mediator or by the Board itself, is performed at the home office of the Company, in this case New York City, or at the office of the Board in the City of Washington, where the ballots are prepared, mailed to the employees and counted and canvassed on their return. The final act of the Board, that of certification, has its sole impact on the employer at its home office, again in New York, with no regard for the routes the planes fly, or their terminals along such routes, or where any particular employee or group is stationed. The location, in or out of the United States, where the employee performs his duties, is no criterion for the determination of the question as to his personal secret choice of his bargaining representative.

FOUR: This question emphasizes the importance of the lower court's decision construing the two Acts of Congress; the Railway Labor Act as amended, and the Civil Aeronautics Act. The two are tied together by the Civil Aeronautics Act, but by the lower court's decision, only geography is important; and a custom of the Mediation Board, based on its railroad practice, and without support or approval by any court, is inappropriately applied to air transportation.

The questions hereby presented have never been decided by this Court. The Railway Labor Act as amended contains

no geographical limitation by term or inference. The Civil Aeronautics Act is world-wide in scope and operation by its very terms.

For these reasons it is respectfully submitted that this petition should be granted.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

BRIEF

The facts are stated in the petition pages 3-9 which are simply the facts pleaded in the petitioners' amended complaint in the District Court below.

ARGUMENT

The Board and the Court of Appeals below have disregarded the differences between air transportation and rail transportation.

This Court has pointed out the distinctions in the case of *Chicago and Southern Airlines, Inc. vs. Waterman Steamship Corp.*, 333 U. S. 103, as follows:

> "But these resemblances must not blind us to the fact that legally as well as literally air commerce, whether at home or abroad, soared into a different realm than any that had gone before * * *. A way of travel which quickly escapes the bounds of local regulative competence called for a more penetrating, uniform and exclusive regulation by the nation than had been thought appropriate for the most easily controlled commerce of the past * * *. However useful parallels with older forms of transit may be in adjudicating private rights, we see no reason why the efforts of the Congress to foster and regulate developments of a revolutionary commerce that operates in three dimensions should be judically circumscribed with analogies taken over from two dimensional transit."

Customs of the National Mediation Board applicable to railroads which stop at the shore line may not be applied to airlines which daily fly around the world.

Privileges granted by the Congress to airline employees may not be frustrated and denied because they do not work for railroads.

The decision of the Court below imagines extra territorial difficulties where none exist. It is no more difficult for the Board to ascertain the employee's choice of his bargaining representative by an air mail ballot sent from New York to Buenos Aires than it is by one sent from New York to Portland, Oregon. In fact were the railroads employee's ballot mailed by train to Portland and by air to Buenos Aires, the air transported ballot would be returned to New York quicker than that sent by rail.

The question involves only the method of determining the workers choice of his bargaining representative. This choice, relating as it does to an American Flag Air Carrier is strictly a right leading to a relationship impacting solely on the employer. The statute grants the right, the Board identifies the representative, *Switchmen's Union of North America vs. National Mediation Board* 320 U. S. 297.

Comparison of the Railway Labor Act, Title I and its amendment Title II inferentially appear to be the basis for the decision of the Court of Appeals. The Court refers to the wording of Section 202 of the Act as the logic of its decision. Clearly, Section 202 merely grants to the employees of Air Carriers the same rights and opportunities theretofore enjoyed by employees of rail carriers, the description of such air carriers is in Section 201. Section 202 extends these rights to such employees not by way of limitation but by way of amplification. Any other interpretation would result in incongruities and complete frustration. That Section adds to the definitions contained in Title I, the employees of the airlines of the United States wherever they may fly by giving them the same opportunities and privileges that railroad employees had previously enjoyed.

Before the Board and before both of the Courts below

respondents argued that to grant petitioners prayer would create chaos abroad because of differences in legal hours of work, compensation, vacation rights, and so forth.

No such questions are presented here. The right petitioner seeks here is solely representation. Such right having been awarded, bargaining will result and agreements must be reached accommodating any contradictory situations that may be found to exist concerning hours of work, compensation, and other working conditions.

The Court of Appeals cites the case of *Foley Bros. vs. Filardo,* 336 U. S. 281, as supporting its decision. This citation demonstrates the basic error of the decision. The Foley case dealt with the application of legal hours of work provided by United States law to work performed in countries of the Near East. No such question is presented here.

Should the Court of Appeals decision stand, no collective bargaining and rights of representation for collective bargaining could ever exist among the employees of any United States airline operating from the United States to and through any group of foreign countries; since neither the United States nor any single foreign country would contain a majority of any class or craft employed by the airline.

The industrial peace of the air transportation system which our Government has fostered and built at so much expense should not be endangered by a denial of lawful rights to these employees.

The Board's decision from which the Court of Appeals quotes in its opinion, refers to collective bargaining agreements which this petitioner has with many other airlines operating combination routes, both foreign and domestic. Such agreements would be made of questionable validity should this decision remain unchallenged and the labor relations of all American Flag carriers would be destroyed

at the source, by the denial of the individual employee's right to choose his representative for collective bargaining purposes.

The importance of the questions presented may be briefly summarized.

International air commerce carried on by American Flag carriers, most of which are also domestic because they operate both domestically and internationally, is vital to the national defense, and to the national welfare. The labor relations of such carriers are regulated by the Railway Labor Act as amended. Flight crews and ground control stations are manned by employees, who work part of the time in this country and part of the time abroad, and frequently the change is instantaneous. Such transportation may not be interrupted by labor strife.

The most prolific source of disputes has been representation disputes, *Virginian Railway Cmpany vs. System Federation No. 40,* 300 U. S. 515-563, l. c. 546.

The labor practice of all of the other airlines except Pan American-Grace Airways, Inc. had been, until the decision of the National Mediation Board in this case, based upon the valid assumption that these groups of employees were entitled to collective bargaining under the Railway Labor Act as amended. The denial of such rights by the decision of the Court below will effectively destroy labor peace in this important industry.

The profession of aircraft dispatcher is a creature of American regulations as they do not exist on foreign airlines.

It is believed that the Court of Appeals held as it did because of undue consideration for the Interstate Commerce Act and its admitted application to ground transportation. (R. 17). The Court has disregarded the Civil Aeronautics Act cited in the petitioners amended complaint (R. 2). This

Act occupies the same position with respect to Title II of the Railway Labor Act (air carriers and their employees) as does the Interstate Commerce Act to Title I of the Railway Labor Act (ground transportation and employees). The definitions contained in Title II of the Railway Labor Act are not restricted by the definitions in Title I but enlarge them to cover air commerce.

The Court of Appeals correctly stated that the Interstate Commerce Act applied only to such "foreign commerce" as took place in the United States (R. 17) when ground transportation was involved, however, the broadening amendment of the Railway Labor Act consisting of Title II and the reference to that Act in the Civil Aeronautics Act clearly shows the intent of the Congress to grant to employees of carriers by air, wherever working, the representation and bargaining privileges theretofore enjoyed by railroad employees.

The Civil Aeronautics Act and Title II of the Railway Labor Act contain no restrictions on foreign commerce but the elaborate regulations cover every detail of foreign air commerce engaged in by United States carriers around the world.

In the hearings before Congressional Committees the intent of the Congrees may be ascertained.([1])([2])

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[1]Hearings before Committees on Interstate and Foreign Commerce on H. R. 9738, 75th Cong., 1st Sess. (1937), pp. 237, 295. Witness Behncke, President Air Line Pilots Association. Page 237:

"Let us go on to paragraph (2) of the labor section we are proposing to be included in H. R. 9738, which reads as follows:

'It shall be a further condition upon the holding of a certificate by any carrier subject to this title that such carrier shall comply with Title II of the Railway Labor Act, as amended.'

"One of the principal purposes behind this paragraph is to secure better compliance with the Railway Labor Act insofar as domestic carriers are concerned, but the principal purpose is to leave no doubt as to its applicability to foreign operations, especially insofar as compliance is concerned. The reason for this is that our vast foreign air network starts and extends almost wholly beyond the borders of the United States. We all know that it is sometimes

CONCLUSION

Your petitioners respectfully submit that the final determination by this Court of the questions of law involved in this case is of the utmost importance to the airlines of the United States and to the labor organizations of the United States representing airline employee groups.

Certiorari should therefore be granted.

Respectfully submitted

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[1]Continued—
hard to secure compliance with a law of the United States when it applies to people and companies operating almost wholly beyond the borders of the United States. Therefore, the purpose of this paragraph (2) is to assure compliance with the Railway Labor Act by making it a condition of the certificate under which these foreign contractors will operate. In other words, the practical result will be that they must comply with the terms of their certificate and there may be a question about their complying with the law itself. This section is very necessary not only to the pilots but to all other American air workers, not only in this country but those who are employed by American companies operating to and through foreign countries and living in foreign countries."

Page 295:

"The following is the section of our proposed amendment to S. 2 which pertains to title II of the Railway Labor Act:

'(3) That the holder of such certificate shall comply with all the provisions of title II of the Railway Labor Act and any future amendments thereto.'

"The operators have objected very strenuously to the inclusion of this section, and they say that it is superfluous. The pilots disagree because this section applies not only to pilots but to all other air workers and will be especially beneficial to American pilots and other American personnel working for the Pan American and other foreign American operations. The reason for this is a very simple one.

"It is not always possible to enforce American laws in foreign countries even though American companies are financed by American dollars. It is, however, very easy to enforce a condition of a contract or a certificate of convenience and necessity because then you control the situation through the purse strings of the United States Treasury which is paying the bill. In other words, this provision of the pilots' proposed amendment to S. 2 makes compliance with the Railway Labor Act a condition of the holding of a certificate of convenience and necessity.

"Summarizing, this means that American companies engaged in foreign operations financed by American capital will be forced to give

APPENDIX

Railway Labor Act, Sec. 152, ninth:

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier."

Railway Labor Act, Sec. 151:

"(2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of

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[1]Continued—
American workers a square deal. In other words, in a situation of this kind a condition of contract or the holding of a certificate of convenience and necessity would be far stronger than an American law which these companies would very quickly find an excuse to violate, and an enforcement would be seriously handicapped. The inclusion of the pilots' section in its present form would result in orderly development of the industry both in foreign and domestic operations and prevent serious labor troubles. Its exclusion would be a step backward into chaotic conditions that existed before the pilots' Section 13 was included in the present air-mail law.
"In other words, the pilots' section will act as a bulwark against the ravishes of greed, unfairness, arbitrary actions against the employees in the American air transport industry both here and abroad. Its exclusion will, on the other hand, mean confusion, endless trouble, all of which will be harmful to the normal development of the industry."

[2]Witness Gorrell, President of the Air Transport Association.
Page 450:
"I invite your attention, further, to the circumstance that the fourth paragraph of the proposal here made to you by the Pilots Association states that a certificate holder under this projected Part III of the Interstate Commerce Act, shall comply with the Railway Labor Act and further amendments thereto. Such a provision is superfluous and redundant, inasmuch as every such carrier is and would be automatically subject to the Railway Labor Act. * * *"

employment or otherwise, of the right of employees to join a labor organization:

"(3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter;

"(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules or working conditions.

"(5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions."

Railway Labor Act, Sections 201-202:

"Section 201. All of the provisions of Title I of this Act, except the provisions of Section 3 thereof, are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

"Section 202. The duties, requirements, penalties, benefits and privileges prescribed and established by the provisions of Title I of this Act, except Section 3 thereof, shall apply to said carriers by air and their employees in the same manner and to the same extent specifically included within the definition of 'carrier' and 'employee,' respectively, in Section 1, thereof."

Civil Aeronautics Act, Section 401 (3):

"(3) 'Air Commerce' means interstate, overseas, or foreign air commerce or the transportation of mail by

aircraft or any operation or navigation of aircraft within the limits of any civil airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce."

Civil Aeronautics Act, Section 481, subparagraph (L) 3 and (L) 4:

"(L) 3. Nothing herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

"(L) 4. It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with Sections 181-188 of Title 45. (Railway Labor Act)."

Railway Labor Act, Section 152, ninth (continued):

"Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of the their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier."

Civil Air Regulations, Part 27 (paraphrased):

This regulation defines the citizenship, education, knowledge, experience and skill of the aircraft dispatcher and requires examinations, inspections and the holding of a certificate for an individual to occupy such position.

Civil Air Regulations, Part 41.0 (paraphrased):

> This regulation prescribes the requirements for air transportation outside the continental limits of the United States throughout the world, requiring operating certificates and more detailed regulation.

Civil Air Regulations, Part 41.84:

> "Dispatchers, number and location 'the air carrier' shall provide an adequate number of certified aircraft dispatchers located at such points as may be necessary to insure safe operations."

Civil Air Regulations, Part 41.85:

> "Each dispatcher shall hold a valid aircraft dispatcher certificate issued in accordance with the provisions of Part 27 of this sub-chapter."

Civil Air Regulations, Part 41.93:

> "Dispatching authorization. Flights shall be started only on the authority of an aircraft dispatcher qualified for the route. * * *".

Orders of Interstate Commerce Commission, Ex Parte No. 72, February 5, 1924. (paraphrased):

> These regulations designate the classes of employees that are to be included within the term "subordinate official" on railroads as provided by Title III of the Transportation Act of 1920. There were no scheduled air transportation carriers in 1924.